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9 JOHN M. CARNES,
10 Plaintiff,
11 vs.
12 OFFICERS SALVINO, OSKINS, and
13 SONIER, Officers of the Mohave County
14 Sheriff's Department; MOHAVE
15 COUNTY, an Arizona municipal
16 corporation,
Defendants.

10 Plaintiff,
11 vs.
12 OFFICERS SALVINO, OSKINS, and
13 SONIER, Officers of the Mohave County
14 Sheriff's Department; MOHAVE
15 COUNTY, an Arizona municipal
16 corporation,

Defendants.

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1 attempting to physically gain entry into his parked RV/motorhome in Fort Mohave,
2 Arizona.” (Dkt. # 47 ¶¶ 15, 17.) Upon approaching the officers to inquire why they were
3 attempting to enter his motorhome, the officers allegedly “refused to explain . . . why [they]
4 were trying to enter his home,” “physically assaulted and restrained” him, and arrested him
5 “in the absence of a warrant or probable cause.” (*Id.* ¶¶ 16-21.) Plaintiff also alleges that the
6 officers then “entered and searched [his] home, also in the absence of a warrant or probable
7 cause.” (*Id.* ¶ 22.) In his Amended Complaint, Plaintiff alleges that “pursuant to official
8 policy or custom and practice, Mohave County . . . failed to instruct, supervise, control,
9 and/or discipline, on a continuing basis, Defendants Salvino, Oskins and Sonier in the
10 performance of their duties” (*Id.* ¶ 36), and that each of the officers were “acting pursuant
11 to either official policy, or the custom, practice and usage of the Mohave County Sheriff’s
12 Department” (*Id.* ¶¶ 3, 6, 9).

13 On or about April 22, 2007, Plaintiff sent his notice of claim letter via certified mail
14 to the address for the County of Mohave and addressed it as follows:

15 Public Servants All:
16 R. Walker, P. Byers,
17 B. Johnson, T. Sockwell,
Et. Al. Mohave County, AZ
700 W. Beale St.
Kingman, AZ 86401

18 (Dkt. # 48 at 3.) The letterhead was addressed similarly. (*Id.*) In his letter, Plaintiff stated
19 that his constitutional rights had been violated by, among others, three unnamed officers of
20 the MCSD. (*Id.* at 2.) Plaintiff also outlined the facts underlying his claims, stating that: (1)
21 “[a]t approximately Noon Time on October 31, 2006 . . . [Plaintiff] saw three public servants
22 breaking into his home”; (2) when he approached them, one of the officers became “very
23 angry and out of control” and “got right into [Plaintiff’s] face”; (3) the officers refused to
24 explain “what they were up to in this break-in”; and (4) the officers were then “all over him
25 pushing him around, brow-beating and abusing him.” (*Id.* at 1.) The letter then stated that,
26 since these events, Plaintiff suffers “almost daily severe panic attacks and a constant inability
27 to sleep through the night.” (*Id.* at 2.) Plaintiff further explained that “[n]o amount of money
28

1 is equal to the value that Mr. Carnes places on his freedoms, and especially freedom from .
2 . . brutal, despicable, unforgivable behavior.” (*Id.*) Plaintiff then demanded \$50,000,000 in
3 damages to settle his claims. (*Id.*)

4 On May 1, 2009, Plaintiff filed his Amended Complaint, alleging federal claims for
5 violation of his Fourth and Fourteenth Amendment rights and a state-law negligence claim.
6 (Dkt. # 47 ¶¶ 13, 23-43.) On May 19, 2009, Defendants filed their motion seeking dismissal
7 of the negligence claim and seeking dismissal of Mohave County from all other claims.¹
8 (Dkt. # 49.)

9 DISCUSSION

10 I. Notice of Claim

11 Defendants move to dismiss Plaintiff’s state-law negligence claim for failure to
12 comply with Arizona’s notice of claim statute, Arizona Revised Statutes section 12-821.01.
13 (Dkt. # 49 at 2-5.) The notice of claim statute:

14 permits an action against a public entity to proceed only if a
15 claimant files a notice of claim that includes (1) facts sufficient
16 to permit the public entity to understand the basis upon which
liability is claimed, (2) a specific amount for which the claim
can be settled, and (3) the facts supporting the amount claimed.

17 *Backus v. State*, 220 Ariz. 101, 104, 203 P.3d 499, 502 (2009). Defendants argue that
18 Plaintiff’s notice of claim letter, which was filed as an attachment to Plaintiff’s Amended
19 Complaint, is deficient because it fails to state the facts which support the amount claimed

21 ¹On July 29, 2009, Plaintiff filed his Response to Defendants’ motion. (Dkt. # 55.)
22 In his Response, Plaintiff fails to address any of the specific arguments made in Defendants’
23 motion. Rather, Plaintiff argues only that his Amended Complaint complies with Federal
24 Rules of Civil Procedure 8 and 11. Thus, under the local rules, the Court is entitled to treat
25 Plaintiff’s failure to respond as waiver of the issues and consent to Defendants’ arguments.
See LRCiv 7.2(i), (b), (c). In its discretion, however, the Court will evaluate the merits of
26 Defendants’ challenge. See LRCiv 7.2(i) (“[N]on-compliance *may* be deemed a consent to
the denial or granting of the motion[.]”) (emphasis added).

27 This Court recommends that Plaintiff retain an attorney. Because it appears from the
28 pleadings and motions on file that Plaintiff may not fully appreciate the nature of his claims,
the requirements of the procedural rules, and how the two interact, the Court recommends
that Plaintiff retain an attorney to represent him in this matter.

1 and because the notice of claim was not directed to Defendants Salvino, Oskins, and Sonier.
2 (Dkt. # 49 at 3, 5.)

3 **A. Facts Supporting the Amount Claimed**

4 Plaintiff's notice of claim letter provides sufficient facts to support the amount
5 demanded. Earlier this year, the Arizona Supreme Court clarified the "facts supporting the
6 amount claimed" requirement of section 12-821.01 in *Backus*. 220 Ariz. at 105-07, 203 P.3d
7 at 503-05. The court explicitly concluded that "a claimant complies with the supporting-facts
8 requirement . . . by providing the factual foundation that the claimant regards as adequate to
9 permit the public entity to evaluate the specific amount claimed." *Id.* at 107, 203 P.3d at 505.
10 The court cautioned that "courts should not scrutinize the claimant's description of facts to
11 determine the 'sufficiency' of the factual disclosure," explaining that this standard "does not
12 require a claimant to provide an exhaustive list of facts; as long as a claimant provides facts
13 to support the amount claimed." *Id.*

14 Shortly after the supreme court issued its opinion in *Backus*, the Arizona Court of
15 Appeals rejected an argument that *Backus* "essentially eliminated . . . any requirement that
16 a claimant provide 'facts supporting the amount' claimed." *Beynon v. Trezza*, --- Ariz. ---, ---
17 P.3d ---, 2009 WL 975995, ¶¶ 13-15 (Ct. App. 2009). The court re-emphasized the rule
18 announced in *Backus*, concluding that a claimant must "at least furnish *some* facts to support
19 the amount claimed." *Id.* ¶¶ 14-15. Based upon this interpretation, the court found that the
20 notice of claim letter in that case was deficient "inasmuch as it provide[d] absolutely no facts
21 supporting the amount demanded therein" and because "Beynon did not describe his injury
22 at all or even claim to be injured." *Id.* ¶ 16.

23 Here, unlike the deficient notice of claim letter at issue in *Beynon*, the notice of claim
24 letter prepared by Plaintiff does satisfy the *Backus* standard because Plaintiff claims to have
25 been injured, describes the conduct giving rise to his injury, and (despite Defendants'
26 contention otherwise) includes some facts supporting the amount of his demand.
27 Specifically, Plaintiff stated that the amount requested was based on the allegedly "very
28 severe, brutal treatment" he received at the hands of, among others, three officers of the

1 MCSD. (Dkt. # 48 at 2.) This treatment included allegations that the officers broke into
2 Plaintiff's home, assaulted him, and possibly arrested and detained him. (*Id.* at 1.) In
3 addition to describing the conduct underlying his claims, Plaintiff described the intangible
4 psychological and emotional injuries that allegedly resulted from the events of October 31,
5 2006 – injuries to which it would be difficult to assign a damage amount. (*Id.* at 2.) Finally,
6 Plaintiff explained his reasoning in demanding \$50,000,000 in damages, stating that “[n]o
7 amount of money is equal to the value that [he] places on his freedoms.” (*Id.*) Plaintiff's
8 notice of claim thus provided a “factual foundation that the claimant regards as adequate to
9 permit the public entity to evaluate the specific amount claimed.” *Backus*, 220 Ariz. at 107,
10 203 P.3d at 505. Indeed, it appears, based on the facts and reasoning presented in the letter,
11 that Defendants have concluded that Plaintiff's demand is “quite extreme, exaggerated, and
12 unrealistic.” (Dkt. # 49 at 4.) The Arizona Supreme Court in *Backus* clearly held that the
13 notice of claim statute “does not require a claimant to set out facts *sufficient to support* the
14 amount claimed,” but only *sufficient to permit* Defendants to evaluate liability. *Backus*, 220
15 Ariz. at 106, 203 P.3d at 504 (emphasis added). Therefore, while Defendants may believe
16 that the facts presented are insufficient to support a \$50,000,000 damage request, the statute
17 does not impose such a stringent requirement on Plaintiff, and this Court need not “scrutinize
18 the claimant's description of facts to determine the sufficiency of the factual disclosure.” *Id.*
19 at 107, 203 P.3d at 505.

20 Because the notice of claim letter contained a specific amount for which the claim
21 could be settled and some facts supporting that amount, Defendants' motion to dismiss
22 Plaintiff's state-law negligence claim on this basis is denied.

23 **B. Sufficiency of Notice to Defendants Salvino, Oskins, and Sonier**

24 Defendants also argue that the state-law negligence claim must be dismissed as to
25 Defendants Salvino, Oskins, and Sonier because the notice of claim was not directed to these
26 individuals. (Dkt. # 49 at 5.) While it appears that Plaintiff did not address or send his notice
27 of claim to Defendants Salvino, Oskins, and Sonier, it also appears that Plaintiff has not
28 asserted his negligence claim against these individual defendants. In his Amended

1 Complaint, Plaintiff claims only that “Mohave County breached its duty of reasonable care
2 owed to plaintiff and was negligent in hiring, training, supervising and/or retaining
3 defendants Salvion [sic], Oskins, and Sonier” and that “[a]s a result of Mohave County’s
4 negligence[,] Plaintiff suffered injuries and damages.” (Dkt. #47 ¶41-42.) Because Plaintiff
5 has not asserted a negligence claim against the individual officers, the Court need not
6 evaluate whether Plaintiff failed to comply with the notice of claim statute in failing to direct
7 his letter to the individual defendants.

8 To the extent that Plaintiff’s negligence claim could be construed as a claim against
9 the individual officers, the claim is dismissed. “When a person asserts claims against a
10 public entity and public employee, the person ‘must give notice of the claim to both the
11 employee individually and to his employer.’” *Harris v. Cochise Health Sys.*, 215 Ariz. 344,
12 351, 160 P.3d 223, 230 (Ct. App. 2007) (quoting *Crum v. Sup. Ct.*, 186 Ariz. 351, 352, 922
13 P.2d 316, 317 (Ct. App. 1996)). “Compliance with the notice provision of § 12-821.01(A)
14 is a mandatory and essential prerequisite to such an action” *Id.* “Actual notice and
15 substantial compliance do not excuse failure to comply with the statutory requirements of
16 [the statute].” *Falcon ex rel. Sandoval v. Maricopa County*, 213 Ariz. 525, 527, 144 P.3d
17 1254, 1256 (Ct. App. 2006).

18 Here, Plaintiff’s notice of claim was not addressed to the individual defendants, was
19 not sent to the individual defendants, and in fact did not even mention their names in the
20 body of the letter. Thus, because Plaintiff did not give sufficient notice of his claims to the
21 individual defendants, he cannot plead a state-law negligence claim against them. To the
22 extent that he has, it is dismissed.

23 **II. Municipal Liability**

24 Defendants argue that Plaintiff’s Amended Complaint fails to properly state a § 1983
25 claim against Defendant Mohave County because “Plaintiff fails to allege a specific
26 unconstitutional policy that was maintained upon which . . . liability may be premised” and
27 because “there was no final policy-making official who is alleged to have been involved in
28 the subject decision.” (Dkt. # 49 at 6.)

1 Liability under § 1983 cannot be premised on a respondeat superior theory. *Monell*
2 *v. N.Y. City Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). However, a municipality or other
3 local government entity may be sued for constitutional torts committed by its officials
4 according to an official policy, practice, or custom. *Id.* at 690-91. A litigant can establish
5 a *Monell* claim in one of three ways:

6 (1) by showing a longstanding practice or custom which
7 constitutes the standard procedure of the local governmental
8 entity; (2) by showing that the decision-making official was, as
9 a matter of state law, a final policy-making authority whose
10 edicts or acts may fairly be said to represent official policy in
11 the area of decision; or (3) by showing that an official with final
12 policymaking authority either delegated that authority to, or
13 ratified the decision of, a subordinate.

14 *Menotti v. City of Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005); *see also Pembaur v. City of*
15 *Cincinnati*, 475 U.S. 469, 484 (1986).

16 In his Amended Complaint, Plaintiff alleges that “pursuant to official policy or custom
17 and practice, Mohave County . . . failed to instruct, supervise, control, and/or discipline, on
18 a continuing basis, Defendants Salvino, Oskins and Sonier in the performance of their duties”
19 (Dkt. # 47 ¶ 36), and that Defendants Salvino, Oskins, and Sonier were “acting pursuant to
20 either official policy, or the custom, practice and usage of the Mohave County Sheriff’s
21 Department” (*Id.* ¶¶ 3, 6, 9). Apparently, Defendants contend that these allegations are
22 insufficient to support municipal liability because Plaintiff did not identify a “specific”
23 policy. (Dkt. # 49 at 6.)

24 “In [the Ninth Circuit], a claim of municipal liability under § 1983 is sufficient to
25 withstand a motion to dismiss even if the claim is based on nothing more than a bare
26 allegation that the individual officers’ conduct conformed to official policy, custom, or
27 practice.” *Whitaker v. Garcetti*, 486 F.3d 572, 581 (9th Cir. 2007); *see also Lee v. City of*
28 *Los Angeles*, 250 F.3d 668, 682-83 (9th Cir. 2001); *Peschel v. City of Missoula*, No. CV 08-
79-M-JCL, 2009 WL 902438, at *4 (D. Mont. Mar. 27, 2009) (citing multiple Ninth Circuit
district court cases that have applied the “bare allegations” standard post-*Twombly*).

1 Here, Plaintiff alleges more than “bare allegations” that the officers’ conduct
2 “conformed to an official policy, custom, or practice.” *Whitaker*, 486 F.3d at 581. Plaintiff
3 alleges that the County had a policy, custom, or practice of failing to instruct, supervise, and
4 control its officers, and that these failures happened on a “continuing basis.” (Dkt. # 47 ¶
5 36.) Plaintiff also alleges that these policies or practices amounted to a failure “to prevent
6 or aid in preventing” the alleged wrongs to Plaintiff and that the County acted “intentionally,
7 knowingly, or with deliberate indifference to the rights of others.” (*Id.* ¶ 37.)

8 Of course, to prevail on this claim, Plaintiff will have to prove that such a policy,
9 custom, or practice in fact existed, and that the policy, custom, or practice led to the
10 deprivation of his constitutional rights. *City of Canton v. Harris*, 489 U.S. 378, 389 (1989);
11 *see also Lee*, 250 F.3d at 681. While Plaintiff’s allegations may prove to be unsubstantiated,
12 his allegations are sufficient to survive Mohave County’s motion to dismiss. *See Leatherman*
13 *v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168-69 (1993)
14 (stating that because only notice pleading is required, litigants must rely on discovery and
15 summary judgment “to weed out unmeritorious claims sooner rather than later”).

16 CONCLUSION

17 Because Plaintiff’s notice of claim letter contained a specific amount for which the
18 claim could be settled and some facts supporting that amount, Defendants’ motion to dismiss
19 Plaintiff’s negligence claim on this basis is denied. To the extent that Plaintiff has pled his
20 negligence claim against Defendants Salvino, Oskins, and Sonier, it is dismissed because
21 Plaintiff failed to notify these defendants of his claims against them. Finally, because
22 Plaintiff’s Amended Complaint does sufficiently allege a custom, practice, or policy of
23 Mohave County that caused a constitutional deprivation to Plaintiff, Defendants’ motion to
24 dismiss Mohave County is denied.

25 **IT IS THEREFORE ORDERED** that the Partial Motion to Dismiss of Defendants
26 Mohave County, Salvino, Oskins, and Sonier (Dkt. # 49) is **GRANTED IN PART** and
27 **DENIED IN PART**.

28 ///

1 **IT IS FURTHER ORDERED** directing Defendants to file their Answer(s) to
2 Plaintiff's Second Amended Complaint (Dkt. # 47) **within ten (10) days** from the date of
3 this Order.

4 DATED this 17th day of August, 2009.

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8 G. Murray Snow
9 United States District Judge
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